

Federal Election Commission

§ 4.4

persons contracting with the Commission with respect to trade secret and commercial or financial information entitled to confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) All Commission records shall be available to the public unless they are specifically exempt under this part.

(c) To carry out this policy, the Commission shall designate a Freedom of Information Act Officer.

§ 4.3 Scope.

The regulations in this part implement the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability of records for inspection and copying.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31291, May 13, 1980]

§ 4.4 Availability of records.

(a) In accordance with 5 U.S.C. 552 (a)(2) and (a)(3) the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation which have been adopted by the Commission;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Opinions of Commissioners rendered in enforcement cases and General Counsel's reports and non-exempt 2 U.S.C. 437g investigatory materials in enforcement files will be made available no later than 30 days from the date on which a respondent is notified that the Commission has voted to take no further action and to close such an enforcement file.

(4) Letter requests for guidance and responses thereto;

(5) The minutes of Commission meetings and transcripts made from tapes of Commission meetings;

(6) Material routinely prepared for public distribution, e.g. campaign guidelines, FEC Record, press releases, speeches, notices to candidates and committees.

(7) Proposals submitted in response to a request for proposals formulated pursuant to the Federal Procurement Regulations. 41 CFR 1-1.001 *et seq.*

(8) Contracts for services and supplies entered into by the Commission.

(9) Statements and certifications (with respect to closing meetings) as required by the Government in the Sunshine Act, 5 U.S.C. 552b.

(10) Reports of receipts and expenditures, designations of campaign depositories, statements of organization, candidate designations of committees, and the indices compiled from the filings therein.

(11) Requests for advisory opinions, written comments submitted in connection therewith, and responses approved by the Commission.

(12) With respect to enforcement matters, any conciliation agreement entered into between the Commission and any respondent.

(13) Copies of studies published pursuant to the Commission's duty to serve as a national clearinghouse on election law administration.

(14) Audit reports (if discussed in open session).

(15) Agendas for Commission meetings.

(b) Public access to the materials described in subparagraphs (a)(3) and (a)(10) through (a)(15) of this section is also available pursuant to the Federal Election Campaign Act of 1971, as amended, in accordance with the provisions of part 5 of this chapter.

(c) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted or promulgated after April 15, 1975 as required by 5 U.S.C. 552(a)(2)(c). These indexes and supplements shall be published and made available on at least a quarterly basis for public distribution unless the Commission determines by Notice in the FEDERAL REGISTER that publication would be unnecessary, impracticable, or not feasible due to budgetary considerations. Nevertheless, copies of any index or supplement shall be made available upon request at a cost not to exceed the direct cost of duplication.

(d) The Freedom of Information Act and the provisions of this part apply only to existing records; they do not require the creation of new records.

(e) If documents or files contain both disclosable and nondisclosable information, the nondisclosable information will be deleted and the disclosable information released unless the disclosable portions cannot be reasonably segregated from the other portions in a manner which will allow meaningful information to be disclosed.

(f) All records created in the process of implementing provisions of 5 U.S.C. 552 will be maintained by the Commission in accordance with the authority granted by General Records Schedule 14, approved by the National Archives and Records Service of the General Services Administration.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31291, May 13, 1980]

§ 4.5 Categories of exemptions.

(a) No requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

(1) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute, provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person which are privileged or confidential. Such information includes confidential business information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount of source of income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, if the disclosure is likely to have the effect of either impairing the Commission's

ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. These procedures shall be used for submitting business information in confidence:

(i) A request for confidential treatment shall be addressed to the FOIA officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(ii) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(4) of this section, the submitter shall provide the following, which may be disclosed to the public: (A) A written description of the nature of the subject information, and a justification for the request for its confidential treatment, and (B) a certification in writing under oath that substantially identical information is not available to the public.

(iii) Approval or denial of requests shall be made only by the FOIA officer or his or her designees. A denial shall be in writing, shall specify the reason therefore, and shall advise the submitter of the right to appeal to the Commission.

(iv) For good cause shown, the Commission may grant an appeal from a denial by the FOIA Officer or his or her designee if the appeal is filed within fifteen (15) days after receipt of the denial. An appeal shall be addressed to the FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463 and shall clearly indicate that it is a confidential submission appeal. An appeal will be decided within twenty (20) days after its receipt (excluding Saturdays, Sundays and legal holidays) unless an extension, stated in writing with the reasons therefore, has been provided the person making the appeal.

(v) Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by